

No. 14/13/87-6Lab/814. —In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-Cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Engineer-in-Chief, PWD, Public Health, Haryana, Chandigarh, *versus* Randhir Singh.

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK.

Reference No. 176 of 1991

Between

SHRI RANDHIR SINGH S/O SHRI DESH RAM, VILLAGE AJITPUR, P. O. MANHERU,
DISTRICT BHIWANI, .. Workman

and

- (1) ENGINEER-IN-CHIEF, P. W. D., PUBLIC HEALTH, HARYANA, CHANDIGARH
- (2) EXECUTIVE ENGINEER, P. W. D., PUBLIC HEALTH, BAHADURGARH
DIVISION, BAHADURGARH (ROHTAK) .. Management

Present :

Shri. K. S. Chohan, Authorised Representative for the workman.
Shri. S. C. Verma, A. D. A., for the management.

AWARD

In exercise of powers conferred by Sub-Clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—*vide* Labour Department, Endorsement No. SOV/Roh/86-91/37858-64, dated 29th October, 1991 :—

Whether the termination of services of Shri Randhir Singh is justified and in order? If not to what relief he is entitled?

2. The workman and the management were summoned. The workman appeared and filed the statement of claim that he was working with the employer for the last ten months as Mali/Chowkidar i.e. from 11th February, 1990 to 30th November, 1990 on the pay scale of Rs. 750-1100 and has not given any chance of any complaint during the entire of service. The workman worked from 14th February, 1990 to 31st March, 1990 at Water Works P. W. D., Public Health, Birla and transferred to P. W. D., Public Health, Sampla and worked there from 1st April, 1990 to 30th September, 1990 when he was again transferred to Ishatheri water works and there also he worked as Mali/chowkidar from 1st October, 1990 to 31st October, 1990. The workman was again transferred to water works, PWD, Public Health, Birla and he worked thereon the same pay scale from 1st November, 1990 to 30th November, 1990. The workman after completing 240 days in service demanded regularization of his services but instead of that the management terminated the services of the workman on 30th November, 1990 without giving any reason or reasonable cause. Therefore, the termination is absolutely illegal, unwarranted and against the principle of natural justice. At the time of termination no reasonable notice was given to the workman and no enquiry was held by the management and no chargesheet was given to the workman nor the workman paid retrenchment compensation. Hence this claim petition is filed that he may be reinstated with continuity of service and full back wages.

3. The management filed the written statement that the workman was engaged as M.C.C./chowkidar, Beldar at D. C. rates for a specific period and as such he has not right to be retained in service with full back wages. The respondent department is not an industry and this Court has no jurisdiction to try and decide this case. The workman has worked at Barahi, Sampla, Ishatheri water works during the period of February, 1990 with usual breaks for 249 days but as the services of the workman were no longer required so he was removed on 30th November, 1990. It is stated that as per Haryana Government rules no notice is to be issued to the workman engaged on daily wages, moreover the respondent department is not an industry hence no provision of the Industrial Disputes Act has been violated. Hence claim statement may be dismissed.

4. Replication was filed by the workman. On the pleadings of the parties, the following issues were framed :—

- (1) As per terms of reference?
- (2) Whether the respondent is not an industry?

(3) Whether this Court has no jurisdiction?

(4) Relief?

(5) My findings on the above issues with reasons thereof are as under :-

Issue No. 1 :

6. The workman has come into witness box as WW-1 and closed at the evidence. The management has examined Shri Mukesh Adiya as MW-1 and after tending the documents Ex. M-1 pages 1 to 9 be closed the evidence.

7. The learned Authorised Representative for the workman filed the written arguments that department of respondent in which the petitioner had worked comes within the definition of industry under Section 2(s) of the Industrial Disputes Act. The respondent department admitted in the written statement that the petitioner has worked for more than 240 days. It is also evident from muster rolls, hence the termination is unjustified as per settled law of 1991 (6) SLR (Punjab & Haryana, 478 Sher Singh versus Presiding Officer of 1991 (1) SLR, 231 (Punjab & Haryana) Krishan Lal versus Presiding Officer, 1991 (8) SLR (Punjab & Haryana) 113 and the petition is entitled to be reinstated on same work with full back wages as the petitioner is unemployed since termination as per evidence. As pleaded the petitioner is also not confronted by respondent/management and as per evidence the management has not complied with the principle of "first come-Last go". The juniors to the petitioner are in service and as per case law of 1991 (5) SLR (Punjab & Haryana) 209 Dayal Singh versus State of Haryana and others. In Vidya Sagar and others versus Reserve Bank of India cited in 1989, RSJ, 572 the management has adopted the tyranny rule of unfair labour practice. The establishment of respondent is not if a seasonal character and strength of department is more than hundred and hence Section 25 as also applicable on the service of petitioner. The services of the petitioner could not be terminated unceremoniously without just complying with the mandatory provisions of Section 25-F, C & H of the Industrial Disputes Act and he is entitled to be reinstated with full back wages as per case law of Prem Singh versus Presiding Officer Labour Court, Ambala and another cited in 1989 (1) RSJ 143, as the services of the petitioner were dispensed with without issuing any notice or without issuing any charge sheet or without conducting any enquiry or without paying any compensation in lieu of and that the management contravened Section 25-F, C & H of the Industrial Disputes Act. The service of the petitioner was dispensed with by the management just to accommodate their near and dears and hence the management adopted tyranny rule of hire and fire as the management has not considered the request of the petitioner. The services of the petitioner may kindly be reinstated with full back wages and reference may kindly.

8. It is proved that the workman has served for more than 240 days in a year and termination is not according to Section 25-F of the Industrial Disputes Act, hence I am of view that the workman is entitled to work the respondent. The plea of the management that the workman was engaged as M. C. C./Chowkidar/Beldar on the D. C. rate of specific period and as service is no longer required he was removed on 30th November, 1990.

9. Shri Mukesh Adiya, S. D. O., who has come into witness box as MW-1 and made statement that on the work on which the applicant used to work had come to an end by 30th November, 1991 and there was no work left for the workman he has not appointed again. Shri Mukesh had denied the suggestion after removed of the workman Sunder Singh was appointed. The workman so also made submission that after he was removed some junior to him are still working in the department. There is no cogent evidence at all that Sunder Singh was appointed as workman or still working in the department. It is true that the workman was working as daily wager for more than 240 days. I am of the view that the workman served for more than 240 days in a year and the management had not complied with Section 25-F of Industrial Disputes Act. I hold that the reference petition is maintainable and decide this issue in favour of the workman.

Issues No. 2 and 3 :

10. Both these issues are not pressed or argued by the parties. Hence I decide both these issues against the management.

Issue No. 4 (Relief) :

11. In view of my findings on the above issues I hold that the workman is entitled to be posted on the job with continuity of service but 50% back wages. However, the parties are left to bear their own costs. The reference is answered and returned accordingly.

The 13th October, 1994

P. L. KHANDUJA

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. 2683 dated, the 20th October, 1994.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh.

P. L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

No. 14/13/87-6Lab./829 - In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s T C. Haryana Chandigarh *versus* Randhir Singh.

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 30/91

Date of receipt : 5-3-1991

Date of decision : 6-10-1994

SHRI RANDHIR SINGH, CONDUCTOR VILLAGE BAMLA, TEHSIL & DISTRICT
BHIWANI .. *Applicant*

versus

1. TRANSPORT COMMISSIONER HARYANA CHANDIGARH
2. GENERAL MANAGER HARYANA ROADWAYS BHIWANI .. *Respondent mgt*

Present :

Shri. S. S. Gupta, for the workman.
Shri Jagdish Pawar, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub section (1) of section 10 of the Industrial Disputes Act 1947 (for short 'the Act'), the Governor of Haryana referred the following dispute between Randhir Singh and the above mentioned management for adjudication to this Court, *vide* Labour Department letter No. 6136-42 dated 27th February 1991 :

Whether termination of services of Randhir Singh is justified and in order? If not to what relief is he entitled?

2. According to Randhir Singh he had been working as Conductor in Haryana Roadways Bhiwani. It is pleaded that he was served with a charge sheet alleging embezzlement of public money and though he sent a proper reply, but domestic enquiry was ordered against him. According to the workman the domestic enquiry conducted against him was not fair and proper. Thereafter his services were terminated, *vide* order dated 7th June 1990. The workman therefore pleaded for reinstatement with full back wages and other consequential benefits.

3. In the written statement the management pleaded that the Enquiry Officer gave full opportunity to the workman to defend himself and to lead his defence evidence and he did not violate the principles of natural justice. It was further stated that after the receipt of enquiry report second show cause notice was served upon the workman and his services were terminated thereafter. The management also pleaded that the whole action taken by it, was legal and justified according to law. Several preliminary objections were also raised by the management, as they are reflected in the following issues were framed on 27th September, 1991 by my learned predecessor :

- (1) As per terms of reference.
- (2) Whether the management lost confidence in the workman?
- (3) Whether the management conducted a just and proper domestic enquiry against the workman? If so to what effect?
- (4) Whether the claim petition is not maintainable?
- (5) Relief.

4. Issue No. 3 regarding domestic enquiry was treated as preliminary issue. The parties led evidence on preliminary issue. I have heard Shri S. S. Gupta, Authorised Representative of the workman and Shri Jagdish Pawar, Authorised Representative of the management and have gone through the case file. My findings on preliminary issue are as under :-

Issue No. 3

5. The management examined Pritam Lal, MW-1 who conducted enquiry in this case. He claimed that he issued notice Ex. M-4 and Ex. N-5 to the workman and had stated that he recorded

the statement of prosecution witness in the presence of workman and afforded opportunity to the workman to cross-examine them. He also stated that he gave opportunity to the workman to lead his defence evidence. He proved the proceedings of the enquiry as Ex. M-6 and his enquiry report as Ex. M-7.

6. On the other hand Randhir Singh deposed that he was not supplied the list of witnesses and statement of allegations alongwith the charge sheet and that he appended his signatures on the enquiry proceedings on the representation of the Enquiry Officer that his signatures were being obtained by way of formality. He stated that he was not given opportunity to cross-examine the prosecution witness or to lead his evidence.

7. A perusal of the enquiry proceedings Ex. M-6 would show that Randhir Singh workman participated in the enquiry and opportunity to cross-examine Sher Singh PW was given to him. The workman was also afforded opportunity to lead defence evidence but he did not avail of the same.

8. In the wake of above. It can be said that domestic enquiry conducted in this case was just and fair. However a perusal of the impugned order dated 7th June 1990 (Ex. M-12) whereby the services of the workman were terminated, would show that General Manager Haryana Roadways Bhiwani while passing the impugned order was greatly influenced by another case of embezzlement of Rs. 160 which was then stated to be pending. The enquiry in our case however related to embezzlement of Rs. 12 when bus was checked on 7th April, 1989. In this way, it is evident that the management, while passing the impugned order had taken into consideration extraneous matter, which was not the subject matter of the charge sheet involved in this case, as is evident from the statement of allegations Ex. M-2. The General Manager, Haryana Roadways, Bhiwani, in the impugned order Ex. M-12, had mentioned that the workman pleaded for mercy, but he observed that because of other case of embezzlement of Rs. 160., there was no chance of reformation and on this ground, the mercy plea of the workman was rejected by General Manager, Haryana Roadways, Bhiwani, while passing the impugned order. Obviously, the workman was charged sheeted of a particular misconduct, but the termination order was passed as a result of cumulative effect of particular misconduct as also some other charge for which opportunity to explain, was proved to have been not given. The impugned order, to my mind, was thus not sustainable, particularly, when the punishing authority was preliminarily influenced by the extraneous charge of embezzlement of Rs. 160 while rejecting the mercy plea of the workman. In this connection, I am supported by the observations made by Hon'ble Supreme Court in authority reported as Binay Limited versus their workman, 1972-Lab I.C.—1141.

9. In the light of discussion above, I hold that the impugned order of termination of services of the workman, which is based on extraneous charge, for which no opportunity of hearing was given to the workman, is not maintainable and has to be set-aside in exercise of the powers under section 11-A of the Act, and the workman is entitled to reinstatement. However, as the misconduct of the charge sheet Ex. M-1 and Ex M-2 stands proved, the workman has to be awarded punishment for the same. In my view it would meet the ends of justice, if five increments of the workman are stopped with cumulative effect and that his back wages from the date of termination, till the date of this award, are reduced to 50% and he will be allowed full wages from the date of this award.

10. Since under the preliminary issues, it has been held that the enquiry conducted in this case was just and fair, it is not necessary to give fresh opportunity to the management to lead evidence to prove the misconduct involved in this case.

11. For the reasons recorded above, termination of services of Randhir Singh, workmen, is held illegal and the same is hereby set-aside. The workman is reinstated in the same post forthwith, with benefits of continuity of service and other consequential benefits. The five increments of the petitioner are stopped with cumulative effect. He shall be entitled to 50% back wages from 7th June, 1990 till the date of this award. However, he shall be entitled to full wages from today i.e 6th October, 1994. The reference is answered accordingly, with no order as to costs.

B. R. VOHRA,

Dated the 6th October, 1994

Presiding Officer,
Industrial Tribunal-cum-Labour Court
Hisar

Endorsement No. 2239, dated the 11th October, 1994

A copy, with spare copy, is forwarded to the Financial Commissioner and Secretary to Government Labour and Employment Department, Chandigarh, for necessary action.

B. R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-Labour Court, Hisar.